

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Rhode Island LFG Genco, LLC

FILE NO.: AIR 13 – 12

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under the DEM's jurisdiction.

B. Facts

- (1) The subject facility is located at 65 Shun Pike in the town of Johnston, Rhode Island (the “Facility”).
- (2) The Facility includes a gas conditioning and compression (“GCC”) plant, combustion turbines and flares.
- (3) The Facility is a stationary source of air pollutants subject to the DEM’s *Air Pollution Control (“APC”) Regulations*.
- (4) The Respondent owns and/or operates the Facility and has a major source permit (the “Permit”) from the DEM to emit air pollutants from the Facility.
- (5) On or about 5 November 2012, the Respondent installed and operated a bioreactor exhausting to a carbon canister system at 75 Shun Pike to control emissions for the Facility (the “Bioreactor”).
- (6) On or about December 2012, the Respondent installed another carbon canister system at 75 Shun Pike to control emissions from a filtrate tank and tote filling operation (the “Carbon Canister System”).
- (7) On or about 2 July of 2013, the DEM became aware that the Respondent installed and operated the Bioreactor.
- (8) On or about 9 July 2013, the town of Johnston ordered that the Bioreactor be shut down. The Respondent complied with the town’s order.
- (9) On 31 July 2013, the DEM received a request from GZA GeoEnvironmental, Inc. on behalf of the Respondent to revise the Permit. This request included an

updated air toxics evaluation for the Facility. The DEM's review of the evaluation revealed that the Bioreactor had the potential to increase emissions of 6 listed toxic air contaminants by greater than the minimum quantity for that contaminant, in pounds per year, as specified in Appendix A of the DEM's APC Regulation No. 9 and in Table III of the DEM's APC Regulation No. 22, indicating that the Respondent should have applied for a minor source permit from the DEM for the Bioreactor prior to installation:

Constituent of Bioreactor Vent Purge Gas	Minimum Quantity of Toxic Air Contaminant as specified in DEM's APC Regulations (pounds per year)	Emission Estimates for Bioreactor (pounds per year)
Benzene	10	315.45
1,4-dichlorobenzene	10	77.04
Tetrachloroethylene	20	25.35
Toluene	1,000	2,154.63
Naphthalene	3	15.35
Hydrogen sulfide	10	49.99

- (10) On 6 August 2013, the DEM responded to the Respondent's request by revising the Permit allowing emissions from the Bioreactor to be exhausted to the GCC flare, eliminating the need for the Bioreactor permit.
- (11) On or about 16 August 2013, the Respondent submitted to the DEM a registration form for the Carbon Canister System.
- (12) On 19 September 2013, the DEM approved the registration for the Carbon Canister System.
- (13) The Respondent did not apply for or receive a minor source permit from the DEM for the Bioreactor.

C. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **DEM's APC Regulation 9.2.1(a)** – prohibiting the construction, installation or modification of any stationary source without obtaining a minor source permit from the DEM for each proposed installation or modification described in the DEM's APC Regulation 9.3.1.
- (2) **DEM's APC Regulation 9.2.2** – prohibiting the operation of emission units for which a permit is required without obtaining the required permit.

- (3) **DEM's APC Regulation 9.3.1 (f)** – requiring a minor source permit for any stationary source that has the potential to increase emissions of a listed toxic air contaminant by greater than the minimum quantity for that contaminant, as specified in Appendix A of the DEM's APC Regulation No. 9.
- (4) **DEM's APC Regulation 9.3.2 (a)** – requiring that any air pollution control system and appurtenances exempted from the requirement to obtain a permit must file a registration form with the DEM prior to the construction, installation or modification of the system.
- (5) **DEM's APC Regulation 22.3.1** – prohibiting the construction, installation or modification of any stationary source which has the potential to increase emissions of a listed toxic air contaminant by an amount greater than the minimum quantity for that contaminant specified in Table III of the regulation without first obtaining an approved permit to construct, install or modify from the DEM.
- (6) **DEM's APC Regulation 22.3.2** – requiring all permits to be issued in accordance with the provisions and limitations of the DEM's APC Regulation No. 9.

D. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

Sixteen Thousand Seven Hundred and Ninety Dollars (\$16,790.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 30 days of your receipt of this Notice of Violation ("NOV"). Payment shall be in the form of a certified check, cashiers check or money order made payable to the "General Treasury - Water & Air Protection Program Account," and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against the Respondent in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

E. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through D above. All requests for hearing MUST:

- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
- (b) Be **RECEIVED** by the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
One Capitol Hill, 2ND Floor
Providence, RI 02903

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
 - (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.
- (2) A copy of each request for hearing must also be forwarded to:

Susan Forcier, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before the DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).
- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Susan Forcier at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Martha Mulcahey of the DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7032.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section E above.

FOR THE DIRECTOR

David E. Chopy, Chief
DEM Office of Compliance and Inspection

Date: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

Rhode Island LFG Genco, LLC
c/o CT Corporation System, Registered Agent
450 Veterans Memorial Parkway, Suite 7A
East Providence, RI 02914

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR

File No.: AIR 13 – 12

Respondent: Rhode Island LFG Genco, LLC

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
C (1), (3), (5) and (6) - Failure to obtain a permit for the Bioreactor	Type I (\$ 10,000 Max. Penalty)*	Major	\$ 7,500	1 violation	\$7,500
C (2) – Operating the Bioreactor without a permit	Type I (\$ 10,000 Max. Penalty)*	Major	\$ 7,500	1 violation	\$7,500
C (4) – Failure to register the Carbon Canister System prior to installation	Type I (\$ 10,000 Max. Penalty)*	Minor	\$1,000	1 violation	\$1,000
<i>SUB-TOTAL</i>					\$16,000.00

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT						
Economic benefit of noncompliance realized by the Respondent for failing to obtain a permit for the bioreactor was calculated by utilizing an EPA model called "BEN". BEN calculated the economic gain of noncompliance based upon a detailed economic analysis. Dates, dollar amounts, and values utilized in the BEN model are as listed.	<table> <tr> <td>Cost</td> <td>\$ 1,271</td> </tr> <tr> <td>Due:</td> <td>11/5/12</td> </tr> <tr> <td>Shut down date:</td> <td>7/9/13</td> </tr> </table>	Cost	\$ 1,271	Due:	11/5/12	Shut down date:	7/9/13	\$ 790.00
Cost	\$ 1,271							
Due:	11/5/12							
Shut down date:	7/9/13							
SUB-TOTAL		\$ 790.00						

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that the DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS= \$ 16,790.00

PENALTY MATRIX WORKSHEET

CITATION: Failure to obtain a permit for installation of the Bioreactor

VIOLATION NO.: C (1), (3), (5) and (6)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent failed to apply for or obtain a minor source permit prior to the installation of a bioreactor exhausting to a carbon canister system. The Respondent is a major stationary source of air pollutants subject to the state's air pollution control regulations. Compliance with permitting and operating requirements is of major importance to the regulatory program.</p> <p>(B) Environmental conditions: Considered, but not utilized for this calculation.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: The bioreactor had the potential to emit 6 chemicals in excess of the minimum quantity of toxic air contaminants in pounds per year as specified in Appendix A of the DEM's APC Regulation No. 9 and Table III of the DEM's APC Regulation No. 22. The 6 chemicals are listed toxic substances under the DEM's APC Regulation 22, Table 1.</p> <p>(E) Duration of the violation: The bioreactor and carbon canister system was installed on or about November 2012.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to obtain the required permit prior to the installation of the bioreactor and carbon canister system. The Respondent has had a major source air pollution permit since 2011. The Respondent had information as early as April 2013 through which the Respondent knew or should have known that a minor source permit was required for the bioreactor. The Respondent is highly regulated by the DEM for the prevention of significant deterioration of the state's air quality.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the violation since the Respondent is the owner/operator of the facility. The prohibition against installing unpermitted equipment is clearly stated in the DEM's APC Regulation No. 9, so the violation was foreseeable by the Respondent.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> X </u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000 \$7,500	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Operating the Bioreactor without a permit
 VIOLATION NO.: C (2)

TYPE		
<u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance** The Respondent is a major stationary source of air pollutants subject to the state’s air pollution control regulations. The Respondent operated equipment that is subject to permit requirements without first having been issued a permit from the DEM. Compliance with permitting and operating requirements is of major importance to the regulatory program.
- (B) **Environmental conditions:** Considered, but not utilized for this calculation.
- (C) **Amount of the pollutant:** Unknown.
- (D) **Toxicity or nature of the pollutant:** The bioreactor had the potential to emit 6 chemicals in excess of the minimum quantity of toxic air contaminants in pounds per year as specified in Appendix A of the DEM’s APC Regulation No. 9 and Table III of the DEM’s APC Regulation No. 22. The 6 chemicals are listed toxic substances under the DEM’s APC Regulation 22, Table 1.
- (E) **Duration of the violation:** 8 months. The bioreactor was placed into operation on or about November 2012. The bioreactor and associated carbon canister system was shut down on 9 July 2013.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to obtain the required permit prior to the operation of the bioreactor and carbon canister system. The Respondent has had a major source air pollution permit since 2011. The Respondent had information as early as April 2013 through which the Respondent knew or should have known that a minor source permit was required for the bioreactor. The Respondent is highly regulated by the DEM for the prevention of significant deterioration of the state's air quality.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the violation since the Respondent is the owner/operator of the facility. The prohibition against operating unpermitted equipment is clearly stated in the DEM's APC Regulation No. 9, so the violation was foreseeable by the Respondent.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> X </u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000 \$7,500	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Failure to register Carbon Canister System prior to installation
 VIOLATION NO.: C (4)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent failed to properly register the carbon canister system installed at the facility. The Respondent is a major stationary source of air pollutants subject to federal and state air pollution control regulations. Compliance with the subject regulation is of major importance to the regulatory program.</p> <p>(B) Environmental conditions: Considered, but not utilized for this calculation.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Estimated annual air emissions exhausted through the system show no exceedances of minimum quantities required for permitting under the cited regulation.</p> <p>(E) Duration of the violation: 8 months. The system was installed and placed into operation on or about December 2012. The Respondent submitted a registration form to the DEM on or about 16 August 2013.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p> <p style="text-align: right;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent the noncompliance. The Respondent has been holding a major source air pollution permit since 2011. The Respondent is highly regulated by the DEM for the prevention of significant deterioration of the state's air quality. The Respondent mitigated the violation by submitting the required registration form on or about 16 August 2013.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the violation since the Respondent is the owner/operator of the facility.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	<i>MODERATE</i>	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500 \$1,000	\$500 to \$1,000	\$100 to \$500